



Correspondence Management System

Control Number: AX-15-000-7136

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Citizen Information

Citizen/Originator: Becher, J. Michael

Organization: Appalachian Center for the Economy & The Environment
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Constituent: N/A

Committee: N/A

Sub-Committee: N/A

Logged by KRB

Control Information

Control Number: AX-15-000-7136 Alternate Number: N/A
Status: For Your Information Closed Date: N/A
Due Date: N/A # of Extensions: 0
Letter Date: Mar 25, 2015 Received Date: Mar 30, 2015
Addressee: Jeffrey E. Roberts, General Addressee Org: Mingo Logan Coal Company,
Manage Mountain Laurel Complex
Contact Type: LTR (Letter) Priority Code: Normal
Signature: SNR-Signature Not Required Signature Date: N/A
File Code: 401_127_a General Correspondence Files Record copy
Subject: Legal Matter - 60-Day Notice of Intent to File Citizen Suit Under Clean Water Act Section
505(a)(1) for Violations of the Terms and Conditions in West Virginia's Section 401
Certification for the Mountain Laurel Mine Complex
Instructions: For Your Information -- No action required
Instruction Note: N/A
General Notes: N/A
CC: Amir Ingram - AO-IO

Lead Information

Lead Author: N/A

Lead Assignments:

Assigner	Office	Assignee	Assigned Date	Due Date	Complete Date
No Record Found.					

Supporting Information

Supporting Author: N/A

Supporting Assignments:

Assigner	Office	Assignee	Assigned Date
Ken Labbe	OEX	OGC	Mar 31, 2015

History

Action By	Office	Action	Date
Ken Labbe	OEX	Forward control to OGC	Mar 31, 2015



APPALACHIAN
MOUNTAIN
ADVOCATES

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March 25, 2015

Jeffrey E. Roberts, President
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General Manager
Mountain Laurel Complex
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REC
2015 MAR 30 PM 1:44
OFFICE OF THE
EXECUTIVE SECRETARY

Re: 60-Day Notice of Intent to File Citizen Suit Under Clean Water Act Section 505(a)(1) for Violations of the Terms and Conditions in West Virginia's Section 401 Certification for the Mountain Laurel Mine Complex

Dear Mr. Roberts:

The Sierra Club, Ohio Valley Environmental Coalition, and the West Virginia Highlands Conservancy (collectively, "the Sierra Club"), in accordance with section 505 of the Clean Water Act (the "Act" or the "CWA"), 33 U.S.C. § 1365, and 40 C.F.R. Part 135, hereby notify you that Mingo Logan Coal Company ("Mingo Logan") has violated, and continues to violate, "an effluent standard or limitation" under Sections 505(a)(1)(A) and (f)(5) of the Act, 33 U.S.C. § 1365(a)(1)(A) and (f)(5), by failing to comply with the terms and conditions of its state certification under Section 401 of the Act, 33 U.S.C. § 1341, for its Mountain Laurel Mine Complex near Sharples, West Virginia. If within sixty days of the postmark of this letter Mingo Logan does not bring itself into full compliance with the Act, we intend to file a citizens' suit seeking civil penalties for Mingo Logan's ongoing and continuing violations and for an injunction compelling it to come into compliance with the Act.

On October 8, 2004, WVDEP issued a Section 401 certification to Mingo Logan for its stream filling activities associated with its underground coal mine and preparation plant at its Mountain Laurel Mine Complex. Those activities were authorized by an individual § 404 Permit No. 199700093 that was noticed to the public on July 20, 2004 and later issued by the U.S. Army Corps of Engineers. They included the temporary culverting of 5,475 linear feet of Seng Camp Creek and one of its tributaries, resulting in impacts to 3.36 acres of waters of the United States. Seng Camp Creek is a tributary of Spruce Fork, which flows into the Little Coal River. WVDEP's certification was "granted subject to compliance with the conditions contained in the Compensation/Mitigation Agreement signed August 13, 2004." Certification, p. 2.

That Agreement proposed in-kind compensation for the adverse impacts of the project on 3.36 acres of Seng Camp Creek and its tributary. It stated that "at a minimum the stream restoration, enhancement or other water quality improvement project or projects will restore, construct, enhance or improve 6.72 acres of stream." Agreement, p. 2. The Agreement provided that Mingo Logan would submit a project plan for WVDEP's approval and complete this project not later than five years after WVDEP issued WV/NPDES Permit No.

the reports show that this buffer has not been established. The 2014 report found “limited signs of survival or growth between 2011 and 2014.” 2014 Report, p. 15.

Second, the mitigation plan requires the placement of cross-vane structures, riffle runs, rootwads, and bank protection measures in the two ditches. Plan, p. 22. These features have not been installed. The 2014 Report states that “[i]n-stream structures have not been installed in either channel due to the lack of a continuous bankfull channel.” 2014 Report, p. 15.

Third, the mitigation plan proposed to enhance approximately 1,700 linear feet (0.7805 acres) of jurisdictional waters in Seng Camp Creek upstream from the proposed 15 foot diameter culvert. Plan, p. 14, 21-22. The plan stated that “[d]uring site development and utilization, the jurisdictional waters in main Seng Camp Creek upstream from the proposed impacts will be enhanced.” Plan, pp. 16-17. Fola’s 2009, 2011, 2012, 2013, and 2014 Reports state that this work had not even been started in 2009, and has still not been completed. 2009 Report, p. 9; 2011 Report, p. 3; 2012 Report, p. 8; 2013 Report, p. 10; 2014 Report, p. 10.

As a result, Mingo Logan has violated its federally enforceable conditions in its 401 Certification on each and every day from September 1, 2009 to the present, and is likely to continue to violate that Certification in the future. If Mingo Logan does not advise us of any remedial steps during the 60-day period, we will assume that no such steps have been taken and that violations are likely to continue. Additionally, we would be happy to meet with Mingo Logan or its representatives to attempt to resolve these issues within the 60-day notice period.

Sincerely,

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